IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3118 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AKHIL GUJARAT COTTON MAZDOOR SANGH

Versus

MAJOOR MAHAJAN SANGH

Appearance:

MR AK CLERK for the Petitioner.

MR DS VASAVADA for Respondent No. 1

Ms.Sheth, Assistant GOVERNMENT PLEADER, for Respondent No. 2

MR DG CHAUHAN for Respondent No. 3-4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/07/2003

ORAL JUDGEMENT

Since it is agreed by both the sides that the matter may be disposed of finally at the admission stage, formal order of rule is issued, returnable today. Mr.D.S. Vasavada, learned Advocate, waives service of rule on behalf of respondent No.1. Similarly, Ms.Sheth,

learned Assistant Government Pleader, and Mr.D.G.Chauhan, waive service of rule on behalf of respondent No.2, and respondents 3 and 4, respectively.

By filing his petition, the petitioner-Union challenges the order dated 3.3.2003 passed below Exhibit 3 in Appeal (ICN) No.5 of 2003 on the ground that the said order is contrary to law, and against the material on record.

The present petitioner-Union has filed an application dated 31st July, 2002 under Section 16 of the Bombay Industrial Relations Act for being registered as Representative Union for the Cotton Textile Industries for the concerned local area in place of respondent No.1-Union herein. Respondent No.1-Union is the existing representative Union at present. The case of the present petitioner is that the petitioner-Union is having larger membership, as compared to the membership of the respondent No.1-Union and it has such majority membership during the whole of the period of three calendar months immediately preceding the calendar month in which it made the application before the Registrar.

On the basis of the said application, the Registrar issued notice to the concerned parties and in response to the notice, the respondent No.1 herein filed its objections. The objections raised by the respondent No.1-Union was, ultimately, decided by the Registrar, by his order dated 7.2.2003. In the said order, the Registrar has observed that, in view of the changed circumstances, it cannot be presumed that the strength of the respondent No.1-Union is larger as compared to the strength of the petitioner-Union. Under the circumstances, the Registrar was of the opinion that it is necessary to find out the actual strength of the members of the concerned Union by resorting to the verification method in connection with the membership of the respective Unions. On the basis of the said order, the Registrar issued notice to both the Unions. By his letter dated 11.2.2003, he has informed the concerned Union that he would like to visit the three mills in question for the purpose of carrying out verification process to ascertain the membership of the petitioner-Union. The respondent No.1 has challenged the aforesaid order dated 7.2.2003 and the communication dated 11.2.2003 by way of an appeal, being Appeal (ICN) No.5 of 2003. Even prior to that stage, respondent No.1 has also filed an appeal, being Appeal (ICN) No.1 of 2003, challenging the order passed by the Registrar, by which the objections raised by the respondent No.1-Union

were overruled by the Registrar.

During the pendency of the first Appeal, being (ICN) No.1 of 2003, the Industrial Court has passed an order, which is at page 11 of the compilation, which is passed on the basis of consent. The Registrar submitted a Pursis before the Industrial Court, stating that he will hear the objections lodged by the respondent No.1-Union first, and after considering their objections, he will proceed with the verification process by adopting sampling method. On the basis of the said Pursis of the Registrar, subsequently, the Industrial Court also passed an order, by which the Industrial Court directed the Registrar to act as per the Pursis, and it is not in dispute that the petitioner-Union as well as respondent No.1-Union, both agreed to abide by the same. Ultimately, on the basis of the same, the Registrar proceeded to decide the objections and by the order dated 7th February, 2003, the objections were disposed of by taking a decision, which, as stated earlier, is challenged in Appeal (ICN) No.5 of 2003.

In the aforesaid appeal, the Industrial Court passed an interim order, at Exhibit 3, and by its order dated 3rd March, 2003, interim direction was given by the Industrial Court to the Registrar to the effect that the Registrar may proceed on the basis of the procedure prescribed under Rule 28A of the Bombay Industrial Relations (Gujarat) Rules, and till that procedure is followed, as prescribed by Rule 28A of the Rules, he may not proceed with the orders passed on 7.2.2003 and 11.2.2003 (by mistake, of course, in the order, the dates given are 7th March, 2003 and 11th March, 2003). The aforesaid order of the Industrial Court passed below Exhibit 3 in Appeal (ICN) No.5 of 2003 is impugned at the instance of the petitioner-Union in this petition.

I have heard learned Advocates appearing for the respective Unions as well as Mr.Chauhan, who is appearing for respondents 3 and 4. At the time of hearing of this petition, there is a consensus prevailing between the parties and, therefore, this petition is required to be decided in view of the said consensus.

Considering the facts and circumstances of the case, and considering the say of the petitioner and the respondents herein, following direction is given to the Registrar for disposing of the main Application. The Registrar is directed to proceed with the verification test by resorting to Rule 28A of the Bombay Industrial Relations (Gujarat) Rules. Under Rule 28A, there is a

complete procedure prescribed for the purpose of ascertaining the membership of the Unions. Documentary evidence in the nature of membership register, counterfoils, minute book, cash book, etc., is required to be produced before the Registrar, and, naturally, the Registrar can go through it for the purpose of his satisfaction at the time of deciding the question about the membership. Under sub-rule (7) of Rule 28A of the Rules, the Registrar is also empowered to adopt such sampling method as deemed fit by him while undertaking the exercise for the purpose of carrying out verification test. Under sub-rule (8) of Rule 28A of the Rules, if the number of witnesses to be examined is very large, the Registrar is empowered to examine such number of witnesses as he may deem fit by adopting even sampling method. In short, there is a complete procedure prescribed under Rule 28A of the Rules.

It is agreed by both the sides that the Registrar may carry out the said exercise for verification for the purpose of ascertaining the membership by following the aforesaid Rule 28A, and, accordingly, the Registrar is directed to follow the said Rules for the purpose of ascertaining the membership and for that purpose, even if there is an objection from either side in connection with particular membership of a particular workman, he is free to consider whether such person is a genuine member of the particular Union or not.

Accordingly, the Registrar is directed to complete the enquiry, which is going on, for the purpose of ascertaining the membership by resorting to Rule 28A as a whole, and as per the said rule, it is open for him to follow the procedure prescribed by the said Rules for the purpose of verification of members. Since the enquiry is pending since long, the enquiry may now be finally concluded, latest by 31st August, 2003. It is agreed by all the learned Advocates that the Union representatives will cooperate for the quick disposal of the main proceedings, so that the matter may not be delayed by raising various disputes at the interlocutory stage. In fact, on conclusion of such enquiry, if the final order is against either side, there is ample remedy available by way of appeal against such final order. Under the circumstances, it is desirable that final order is passed so that there may not be disputes which are required to be decided at the interlocutory stage.

It is clarified that whatever observation the Registrar has made in the order, stating that in view of the change of time, there might be variation in the

membership, is not to be treated as a final verdict of the Registrar on this point, as it is a mere passing observation made at the time of deciding the objections. Similarly, the observations made by the Industrial Court also may not be taken into consideration as the Registrar is required to decide the matter finally as per the present order.

Accordingly, the order of the Industrial Court is substituted by the present order and the parties have to abide by the present order and all the questions as to in which manner the Registrar should carry out the verification test, etc., is left to the Registrar subject to compliance with the provisions of Rule 28A of the Bombay Industrial Relations (Gujarat) Rules. It is needless to say that the Registrar will render the final decision as per law. It is expected from the parties that they will cooperate for the early disposal of the main Appeal without resorting to interim applications at the interlocutory stage.

The petition is accordingly allowed to the aforesaid extent. Rule is made absolute accordingly.

4th July, 2003 (P.B. Majmudar, J.)

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(apj)